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# Ling Peek Hoe & Anor v Golden Star & Ors

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-02(IM)-2555–12 OF 2018
ZALEHA YUSOF, HANIPAH FARIKULLAH AND KAMALUDIN MD SAID JJCA
7 AUGUST 2020

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*Civil Procedure — Stay of proceedings — Committal proceedings — Application for stay of committal proceedings pending disposal of application for review at Federal Court — Whether High Court had jurisdiction to grant order of stay — Rules of the Federal Court 1995 r 137 — Rules of Court 2012 O 92 r 4*

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This was an appeal by the appellants ('plaintiffs') against the decision of the High Court allowing the respondents' ('defendants') application to stay the committal proceedings pending the disposal of the defendants' application for review at the Federal Court. The first plaintiff was the registered owner of a shop lot ('Lot 59') and two pieces of agricultural land ('Tanah Kg Selamat'). The first plaintiff took a loan from the second defendant, a licensed moneylender, through the third defendant. For the purpose of this loan, the first plaintiff provided the original copies of the title document of Lot 59, Lot 27 and Tanah Kg Selamat to the second defendant who would keep these documents until the loans were fully paid. Between 1996 to 2003, there were numerous sale and purchase transactions between the plaintiffs and the defendants related to Lot 59 and Tanah Kg Selamat. In 2003, the first plaintiff discovered that Lot 59 and Tanah Kg Selamat had been transferred to the third, fourth and fifth defendants. All documentation for the loan and land and property transfer was done by the first defendant. The first plaintiff maintained that Lot 59 and Tanah Kg Selamat were unlawfully transferred to the third, fourth and fifth defendants and subsequently filed civil action Guaman 203/2006 against the defendants for, inter alia, a declaration that the sale and purchase agreement and the transfer of ownership forms on Lot 59 and Tanah Kg Selamat were null and void. The third, fourth and fifth defendants filed a counter-suit against the first plaintiff vide Guaman 45/2008 claiming, inter alia, for damages against the first plaintiff's trespass over Tanah Kg Selamat. The High Court ordered that the sale and purchase agreement between the first plaintiff and the third, fourth and fifth defendants on Tanah Kg Selamat was null and void and the transfer of ownership forms for Tanah Kg Selamat was declared null and void. The High Court also dismissed the third, fourth and fifth defendants' application for a stay of execution pending the defendants' appeal against the order. Subsequently, the plaintiffs' application for an

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execution order was granted by the High Court and ordered that the third, fourth and fifth defendants to cause the transfer of charge to be released and that the original titles of Tanah Kg Selamat to be surrendered to the first plaintiff within 60 days from the date of the order. The Court of Appeal allowed the defendants' appeal and set aside the orders granted by the High Court. The Federal Court set aside the order of the Court of Appeal and both orders of the High Court were reinstated. The plaintiffs then sent letters to the third, fourth and fifth defendants requesting compliance with the order of the Federal Court or face committal proceedings. Later, the first plaintiff filed a committal application against the third, fourth and fifth defendants. The defendants filed an application before the High Court for a stay of proceeding relating to the committal proceeding. Their main grounds were that the defendants had applied for leave for the Federal Court to review its decision pursuant to r 137 of the Rules of the Federal Court 1995. The High Court allowed the application by the second, third, fourth and fifth defendants. Hence, this appeal by the plaintiffs. The issue for consideration was whether the High Court had jurisdiction to grant an order to stay the committal proceedings pending the disposal of an application for review.

**Held**, dismissing the appeal:

(1) The court may only stay a proceeding pending the outcome of a review application in the Federal Court pursuant to the courts inherent power under O 92 r 4 of the Rules of Court 2012, so as to prevent injustice and abuse of court process. The court regarded the jurisdiction involved by the High Court as exceptional, as it was a jurisdiction which should not be exercised unless it appeared that the order appeal from it would affect an injustice and the injustice could be avoided by the intervention of the court. The review application in the Federal Court, would have an implication upon the outcome of the present case. The granting of leave by the High Court did not amount to a finding of committal. It was merely an ex parte vetting process to consider there was a prima facie case of contempt. It was undeniable that if the defendants were to ultimately succeed on the review application, the severity of prejudice that could be suffered by the defendants was apparent if the stay of committal proceeding was not allowed as the committal proceeding was a proceeding that was penal in nature. The issue on the balance of justice was therefore in favour of the defendants. There had been no error to warrant an appellate intervention in the exercise of discretion by the learned judicial commissioner in the grant of stay of the committal proceeding (see paras 49–54).

**[Bahasa Malaysia summary**

Ini adalah rayuan oleh perayu ('plaintif') terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan responden ('defendan') untuk

menangguhkan prosiding komital sementara menunggu permohonan defendan untuk disemak di Mahkamah Persekutuan. Plaintif pertama adalah pemilik berdaftar lot kedai ('Lot 59') dan dua bahagian tanah pertanian ('Tanah Kg Selamat'). Plaintif pertama mengambil pinjaman dari defendan kedua, pemberi pinjaman wang berlesen, melalui defendan ketiga. Untuk tujuan pinjaman ini, plaintif pertama memberikan salinan asal dokumen hakmilik Lot 59, Lot 27 dan Tanah Kg Selamat kepada defendan kedua yang akan menyimpan dokumen-dokumen ini sehingga pinjaman dibayar sepenuhnya. Antara tahun 1996 hingga 2003, terdapat banyak urus niaga jual beli antara plaintif dan defendan yang berkaitan dengan Lot 59 dan Tanah Kg Selamat. Pada tahun 2003, plaintif pertama mendapati bahawa Lot 59 dan Tanah Kg Selamat telah dipindahkan kepada defendan ketiga, keempat dan kelima. Semua dokumen pinjaman dan pemindahan tanah dan harta tanah dilakukan oleh defendan pertama. Plaintif pertama berpendapat bahawa Lot 59 dan Tanah Kg Selamat dipindahkan secara tidak sah kepada defendan ketiga, keempat dan kelima dan kemudian mengemukakan tindakan sivil Guaman 203/2006 terhadap defendan untuk, antara lain, perisytiharan bahawa perjanjian jual beli dan pemindahan borang pemilikan di Lot 59 dan Tanah Kg Selamat adalah tidak sah dan batal. Defendan ketiga, keempat dan kelima memfailkan tuntutan balas terhadap plaintif pertama melalui Guaman 45/2008 yang menuntut antara lain ganti rugi terhadap pencerobohan plaintif pertama di Tanah Kg Selamat. Mahkamah Tinggi memerintahkan bahawa perjanjian jual beli antara plaintif pertama dan defendan ketiga, keempat dan kelima di Tanah Kg Selamat adalah batal dan borang pemindahan hakmilik untuk Tanah Kg Selamat diisytiharkan tidak sah dan batal. Mahkamah Tinggi juga menolak permohonan defendan ketiga, keempat dan kelima untuk hukuman penangguhan sementara menunggu rayuan defendan terhadap perintah tersebut. Selanjutnya, permohonan plaintif untuk perintah pelaksanaan telah diberikan oleh Mahkamah Tinggi dan memerintahkan agar defendan ketiga, keempat dan kelima untuk membuat pindahmilik cagaran dilepaskan dan hakmilik asal Tanah Kg Selamat diserahkan kepada plaintif pertama dalam masa 60 hari dari tarikh perintah. Mahkamah Rayuan membenarkan rayuan defendan dan mengetepikan perintah yang diberikan oleh Mahkamah Tinggi. Mahkamah Persekutuan mengetepikan perintah Mahkamah Rayuan dan kedua-dua perintah Mahkamah Tinggi dikembalikan. Plaintif kemudian menghantar surat kepada defendan ketiga, keempat dan kelima meminta pematuhan perintah Mahkamah Persekutuan atau menghadapi prosiding komital. Kemudian, plaintif pertama memfailkan permohonan komital terhadap defendan ketiga, keempat dan kelima. Defendan memfailkan permohonan di Mahkamah Tinggi untuk penangguhan prosiding yang berkaitan dengan prosiding komital. Alasan utama mereka adalah bahawa defendan telah memohon kebenaran untuk Mahkamah Persekutuan untuk menyemak semula keputusannya berdasarkan k 137 Kaedah-Kaedah Mahkamah Persekutuan 1995. Mahkamah Tinggi membenarkan permohonan oleh defendan kedua, ketiga, keempat dan kelima.

Oleh itu, rayuan ini oleh plaintif. Isu untuk pertimbangan adalah sama ada Mahkamah Tinggi memiliki bidang kuasa untuk membenarkan perintah untuk menangguhkan prosiding komital sementara menunggu pendengaran permohonan semakan.

**Diputuskan**, menolak rayuan:

(1) Mahkamah hanya dapat menangguhkan prosiding sementara menunggu keputusan permohonan semakan di Mahkamah Persekutuan menurut kuasa sedia ada mahkamah di bawah A 92 k 4 Kaedah-Kaedah Mahkamah 2012, untuk mencegah ketidakadilan dan penyalahgunaan proses mahkamah. Mahkamah menganggap bidang kuasa yang dilibatkan oleh Mahkamah Tinggi adalah luar biasa, kerana itu adalah bidang kuasa yang tidak boleh dilaksanakan melainkan jika keputusan rayuan daripadanya akan mempengaruhi ketidakadilan dan ketidakadilan dapat dihindari dengan campur tangan mahkamah. Permohonan semakan di Mahkamah Persekutuan, akan memberi implikasi kepada keputusan kes ini. Pemberian kebenaran oleh Mahkamah Tinggi tidak sama dengan penemuan komital. Ia hanyalah proses pemeriksaan ex parte untuk mempertimbangkan terdapat kes komital prima facie. Tidak dapat dinafikan bahawa jika defendan akhirnya berjaya dalam permohonan semakan, keberatan prejudis yang akan ditanggung oleh defendan adalah jelas jika penangguhan prosiding komital tidak dibenarkan kerana prosiding komital adalah prosiding yang bersifat hukuman. Oleh itu, isu mengenai keseimbangan keadilan memihak kepada defendan. Tidak ada kesalahan untuk mewajarkan campur tangan rayuan dalam pelaksanaan budi bicara oleh pesuruhjaya kehakiman yang bijaksana dalam pemberian penangguhan prosiding komital (lihat perenggan 49–54).]

**Cases referred to**

*AB (Sudan) v Secretary of State for the Home Department* [2013] EWCA Civ 921, CA (refd)

*AmBank (M) Bhd v Metal Reclamation (Industries) Sdn Bhd & Ors* [2016] 10 CLJ 205, HC (refd)

*Edelsten v Ward (No 2)* (1988) 63 ALJR 346 (refd)

*Foo Khoon Long v Foo Khoon Wong* [2009] 9 MLJ 441, HC (refd)

*Fuller & Cummings v Director of Public Prosecutions (Cth)* (1994) 68 ALJR 611 (refd)

*Government of Malaysia v Datuk Haji Kadir Mohamad Mastan and another application* [1993] 3 MLJ 514, HC (refd)

*Jennings Construction Ltd v Burgundy Royale Investments Pty Ltd* (1986) 161 CLR 681, HC (refd)

*Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 5 AMR 758, FC (refd)

*Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86; [1965] 1 LNS 90 (refd)
*PP v Dato' Sri Mohd Najib bin Hj Abd Razak* [2019] 4 MLJ 421, FC (refd)
*R (on the application of AO & AM) v Secretary of State for the Home Department* [2017] UKUT 168 (IAC) (refd)
*Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 3)* [2010] 2 MLJ 141; [2012] 2 AMR 821, FC (refd)

**Legislation referred to**

Courts of Judicature Act 1964 ss 73, 80, 102
Rules of Court 2012 O 92 r 4
Rules of the Court of Appeal 1994 r 13
Rules of the Federal Court 1995 rr 52, 137

**Appeal from:** Civil Suit No 22–203 of 2006 (High Court, Ipoh)

*Edmund Lim Yun (Hong Chong Hang with him) (Hong Chew King & Co) for the appellants.*
*Haniff Khatri (Irzan Iswatt with him) (Haniff Khatri) for the respondents.*

**Hanipah Farikullah JCA:**

INTRODUCTION

**[1]** This is an appeal by the appellants (plaintiffs) against the decision of the High Court allowing the respondents' (defendants) application to stay the committal proceeding pending the disposal of the respondents' application for review at the Federal Court.

**[2]** The ground of the plaintiffs' appeal is that the learned judicial commissioner (JC) erred in fact and law in deciding that the High Court has jurisdiction to grant an order for stay of the committal proceeding pending the disposal of an application by the defendants for review in the Federal Court pursuant to r 137 of the Federal Court Rules 1995.

**[3]** We heard the appeal and after due consideration to the respective submissions of counsel, we dismissed the appeal and now give our reasons.

FACTS

**[4]** Before dealing specifically with the appeal in the present case, it is appropriate to state the background facts of this case.

**[5]** The first plaintiff was the registered owner of a shop lot known as Lot 59, Taman Ilmu, Setiawan, Perak ('Lot 59'). He was also the registered

owner (10/15 parts of undivided shares) of two pieces of agricultural land with the title Nos GM 3896 Lot 563 and GM 3895 Lot 2564, both at Kg Selamat, Setiawan, Perak ('Tanah Kg Selamat'). The first plaintiff's mother, Wong Sing Bee, owns the other 5/15 parts of undivided shares of Tanah Kg Selamat. The second plaintiff is the first plaintiff's son.

**[6]** The first defendant is an advocate and solicitor. The second defendant is a licensed money lender. The third, fourth and fifth defendants are partners of the second defendant. The first, third, fourth and fifth defendants are siblings.

**[7]** Sometime in 1995, the first plaintiff took a loan of RM590,000 from Hong Leong Bank Bhd. Lot 59, Tanah Kg Selamat and another property at No 7, Jalan Raja Omar, Setiawan, were all placed as securities for the said loan.

**[8]** In 1996, the first plaintiff took a loan of RM5,000 from the second defendant through the third defendant. For purpose of this loan, the first plaintiff provided the original copies of the title document of Lot 59, Lot 27 and Tanah Kg Selamat to the second defendant whom would keep these documents until the loans were fully paid. The first plaintiff was also asked to sign the said documents for the loan purposes. Subsequently, the second defendant approved further loans amounting to RM792,187.50 to the first plaintiff.

**[9]** Between 1996–2003, there were numerous sale and purchase transactions between the plaintiffs and the defendants related to Lot 59 and Tanah Kg Selamat.

**[10]** In 2003, the first plaintiff discovered that Lot 59 and Tanah Kg Selamat had been transferred to the third, fourth and fifth defendants.

**[11]** All documentation for the loan and land and property transfer was done by the first defendant.

**[12]** The first plaintiff maintained that Lot 59 and Tanah Kg Selamat were unlawfully transferred to the third, fourth and fifth defendants.

**[13]** Based on the development as enumerated above, on 18 August 2006, the plaintiffs filed the Civil Action No (M1)-22–203 of 2006 ('Guaman 203 of 2006') against the defendants for, inter alia, a declaration that the sale and purchase agreement and the transfer of ownership forms on Lot 59 and Tanah Kg Selamat were null and void. The main ground of the claim was fraud.

**[14]** On 27 February 2008, the third, fourth and fifth defendants filed a counter-suit against the first plaintiff vide Civil Action No (M3)-22–45 of 2008 ('Guaman 45 of 2008'). In this suit, the defendants claim, inter alia, for damages against the first plaintiff's trespass over Tanah Kg Selamat.

**[15]** On 24 February 2010, the Ipoh High Court ordered for both Guaman 203 of 2006 and Guaman 45 of 2008 to be consolidated, with Guaman 203 of 2006 became the main suit and Guaman 45 of 2008 as a counterclaim in that main suit.

**[16]** The Ipoh High Court on 28 November 2012 ordered that:

(a) the sale and purchase agreement between the first plaintiff and the third, fourth and fifth defendants on Tanah Kg Selamat was null and void; and

(b) the transfer of ownership forms for Tanah Kg Selamat was declared null and void.

**[17]** The Ipoh High Court dismissed the third, fourth and fifth defendants' application for a stay of execution pending the defendants' appeal against the said order dated 28 November 2012.

**[18]** Subsequently, on 11 April 2013, the plaintiffs' application for an execution order was granted by the Ipoh High Court and ordered that the third, fourth and fifth defendants to cause the Transfer of Charge Nos 197–200/2000 Jld 100 Folios 65-68 (all for Tanah Kg Selamat) to be released and that the original titles of Tanah Kg Selamat to be surrendered to first plaintiff within 60 days from date of the order.

**[19]** On 13 March 2015, the Court of Appeal allowed the defendants' appeal and set aside both orders granted by the Ipoh High Court on 28 November 2012 and 17 April 2013.

**[20]** On 20 June 2017, the Federal Court set aside the order of the Court of Appeal and both orders of the Ipoh High Court were reinstated.

**[21]** The plaintiffs' solicitors sent letters to the solicitors for the third, fourth and fifth defendants dated 28 June 2017 and 12 March 2018, requesting compliance with the order of the Federal Court dated 20 June 2017 or face committal proceeding.

**[22]** Solicitors for the third, fourth and fifth defendants vide its letter dated 6 April 2018 had advised the third, fourth and fifth defendants to comply with the order of the Federal Court.

**[23]** On 16 April 2018, the first plaintiff filed an ex parte application for leave to commence a committal proceeding against the third, fourth and fifth defendants.

**[24]** On 18 May 2018, the High Court granted leave to the plaintiffs to commence the said committal proceeding. Following this order, on 28 May 2018, the first plaintiff filed a committal application against the third, fourth and fifth defendants.

**[25]** On 25 October 2018, the defendants filed an application before Ipoh High Court for a stay of proceeding relating to the committal proceeding. Their main grounds of this application were that the defendants had applied for leave for the Federal Court to review its decision on 20 June 2017 pursuant to r 137 of the Federal Court Rule 1995.

**[26]** On 31 January 2019, the Ipoh High Court allowed the second, third, fourth and fifth defendants' application for stay of the committal proceeding of encl 8. Hence, the plaintiffs appeal to this court.

DECISION OF THE HIGH COURT

**[27]** The defendants filed an application for a stay of committal proceeding pending the determination of the application for review at the Federal Court.

**[28]** The source of statutory powers relied upon by the defendants to support the application for stay was O 92 r 4 of the Rules of Court 2012 ('the ROC 2012').

**[29]** The learned JC allowed the defendants' application for stay of proceeding, primarily based on the following reasons:

> [25] Granted, the grounds for the application in Enclosure 8 stems from the Order of the Federal Court dated 20.6.2017. But as far as the proceeding before this Court with regards to Enclosure R8 is concerned, it is regarded as a fresh application with parties provided with the opportunity to convince this Court to grant the committal order or not. This is clearly the principle laid down in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong & Ors* [2012] 2 CLJ 849 when Ariffin FCJ (as His Lordship then was), in delivering the Federal Court decision said:
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> > Contempt of court has traditionally been classified either criminal or civil ... one thing is clear, be it civil or criminal contempt, the standard of proof required in either type is the same, which is beyond reasonable doubt.
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> [26] The current application before me in Enclosure 8 is, to this Court's finding, a straight forward application for this Court to stay another application which is pending before me. I am seized with the power and jurisdiction to deal with application by virtue of the provisions of O 45 r 11, O 55 r 16, and O 92 r 4 of the

Rules of Court 2012 ('ROC 2012').

**[30]** The learned JC was of the view that the defendants' application for stay of the committal proceeding, fulfils the test of special circumstances as laid down in *Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86; [1965] 1 LNS 90; *Government of Malaysia v Datuk Haji Kadir Mohamad Mastan and another application* [1993] 3 MLJ 514 and *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 5 AMR 758.

**[31]** Further, the learned JC said:

> [32] This court is further of the view that the nugatory principle as laid down in *Kosma Palm Oil Mill Sdn Bhd* applies squarely to the matter before me now, in that the outcome of the review brought by D3-D5 before the Federal Court would be rendered nugatory should this court disallow stay and proceed to hear the application in Enclosure 8. That is already a special circumstance that warrants this court to grant the stay applied for.

THE ISSUES ON APPEAL

**[32]** Whether the High Court has jurisdiction to grant an order to stay the committal proceeding pending the disposal of an application for review made pursuant to r 137 Rules of the Federal Court 1995 in the Federal Court.

DECISION

**[33]** As stated above, the only issue in the present appeal is confined to the decision of the High Court granting an order to stay the commencement of the committal proceeding pending the disposal of the defendants' review application in the Federal Court.

**[34]** The crux of the argument submitted for the plaintiffs is that once the Federal Court disposed of the appeal, the High Court has no power to allow the stay of the committal proceeding filed by the defendants in this case.

**[35]** In support of the arguments, learned counsel for the plaintiffs relied on the Federal Court decision in *Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 3)* [2010] 2 MLJ 141; [2012] 2 AMR 821.

**[36]** The defendants' case was that if the application for stay is not granted by the court, the result of the review becomes nugatory as the position of the parties if the committal proceeding under encl 8 is allowed by the court, the respondents would be committed to imprisonment and/or be fined, and this definitely could not be compensated with costs.

**[37]** The defendants relied on the decision of the Federal Court in *Kosma Palm Oil Mill Sdn Bhd* to support their application for stay of the committal proceeding in the High Court. In *Kosma Palm Oil Mill Sdn Bhd,* the Federal Court held that the test applicable to the grant of a 'stay of execution' is whether there are special circumstances, the most common of which is whether the appeal would be rendered nugatory if a stay of execution is not granted.

**[38]** It is to be noted that *Kosma Palm Oil Mill Sdn Bhd* does not concern an application to stay proceedings. In *Kosma Palm Oil Mill Sdn Bhd*, at pp 6 and 17–19:

(a) the applicants entered into agreements to purchase estate lands from the respondents. Pursuant to such agreements, the applicants took possession of the estate lands;

(b) there was a dispute regarding the completion of the agreements in question and the respondents regained possession of the estate lands. Consequently, the applicants obtained an interim injunction from the High Court against the respondents which resulted in the applicants retaking possession of the estate lands;

(c) the High Court subsequently dissolved the interim injunction but granted an Erinford injunction pending the disposal of the applicants' appeal to the Court of Appeal against the dissolution of the interim injunction;

(d) the Court of Appeal dismissed the applicants' appeal and the Erinford injunction therefore lapsed. The respondents then applied to the High Court for possession of the estate lands and this was granted by the High Court (order for possession of lands);

(e) the applicants appealed to the Court of Appeal against the order for possession of lands. The High Court dismissed the applicants' first application to stay the execution of the order for possession of lands. Hence, the applicants applied to the Court of Appeal to stay the execution of the order for possession of lands. The Court of Appeal dismissed the appeal (Court of Appeal's decision) and the stay of execution application;

(f) the applicants applied to the Federal Court for leave to appeal against the Court of Appeal's decision (leave application). Pending the disposal of the leave application, the applicants applied to the Federal Court to stay the execution of the order for possession of lands; and

(g) the Federal Court dismissed the application to stay the execution of the order for possession of lands on the ground that there were no special circumstances.

**[39]** It is noted that *Kosma Palm Oil Sdn Bhd* concerns only an application to stay the execution of a court order and does not relate to the court's power to stay proceedings as applied by the defendants before the High Court in encl 8.

**[40]** The case of *Takako Sakao* relied by the plaintiffs does not concern an application to stay proceedings.

**[41]** In *Takako Sakao*, the facts are as follows: The appellant, a Japanese citizen, and the first respondent were business partners in a restaurant. They decided to acquire the shop house ('the property') in which they operated their restaurant business. Upon acquiring the property, the first respondent sought to retain it for her own benefit and sold the property to the second respondent company. The appellant then commenced an action against the first respondent to establish that she was the beneficial owner of the property of which the second respondent was the registered proprietor. The appellant's claim that a trust had arisen in her favour was dismissed by the High Court but this court allowed the appellant's appeal reversing the judgments of the courts below and holding that the appellant was the beneficiary under a constructive trust, which bound the conscience of the second respondent as trustee. Orders were accordingly made to protect the subject matter of the trust in specie. Thereafter it emerged that the second respondent had sold off the subject matter of the trust unilaterally and that it had pocketed the proceeds of the sale. This court then made a second judgment in the form of specific relief ('the second judgment') to give effect to the principal judgment of this court. The respondents now moved to stay execution of the orders made in the principal judgment and the second judgment on the grounds that they had applied for review under r 137 of the Rules of the Federal Court 1995 ('the review application'). The respondents submitted that this court had the jurisdiction and power to hear this application and grant a stay pursuant to s 80 of the Courts of Judicature Act 1964 ('the CJA'). They argued that s 80 of the CJA should be construed widely to include post-judgment applications that seek a stay of execution pending the hearing of an application to review.

**[42]** Gopal Sri Ram, FCJ held as follows:

> ... Once an application for leave is refused or an appeal is finally disposed off by this court, there is nothing left to protect or preserve. If the second respondent's argument is correct, then an appellant who fails in his appeal will equally be entitled to ask for a stay pending a review. That proposition need only be stated to recognize its fallacy. Once an appeal is disposed off, there is no power in this court to stay its effect ...

**[43]** Pursuant to ss 73 and 102 of the Court of Judicature Act ('the CJA') and r 13 of the Rules of the Court of Appeal ('the RCA') and r 52 of the Rules of the Federal Court ('the RFC'), the High Court, Court of Appeal and the Federal

Court have powers to grant a stay pending the disposal of an appeal to the Court of Appeal or the Federal Court, as the case may be. We are not able to find any reported case which has decided on an application of a stay of a suit pending the outcome of a review application in the Federal Court.

**[44]** Sections 73 and 102 CJA, r 13 of the RCA and r 52 of the RFC, in our view, do not empower the court to stay proceedings pending the outcome of a review. As such, these provisions do not support the defendants' application for stay of the committal proceeding pending the review application in the Federal Court.

**[45]** The issue of staying proceedings was the subject of detailed consideration by the Court of Appeal in *AB (Sudan) v Secretary of State for the Home Department* [2013] EWCA Civ 921. The court firstly contrasted a stay of proceedings with a stay of enforcement of a judicial decision or order. It emphasised that stay of proceedings issue involve case management decisions. It added at para [25]:

> 27. A stay on proceedings may be associated with the grant of interim relief, but it is essentially different. In determining whether proceedings should be stayed, the concerns of the court itself have to be taken into the balance. Decisions as to listing, and decisions as to which cases are to be heard at any particular time are matters for the court itself and no party to a claim can demand that it be heard before or after any other claim. The court will want to deal with claims before it as expeditiously as is consistent with justice. But, on the other hand, it is unlikely to want to waste time and other valuable resources on an exercise that may well be pointless if conducted too soon. If, therefore, the court is shown that there will be, or there is likely to be, some event in the foreseeable future that may have an impact on the way a claim is decided, it may decide to stay proceedings in the claim until after that event. It may be more inclined to grant a stay if there is agreement between the parties. It may not need to grant a stay if the pattern of work shows that the matter will not come on for trial before the event in question. The starting point must, however, be that a claimant seeks expeditious determination of his claim and that delay will be ordered only if good reason is shown.
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> 28. In cases where a request for a stay on proceedings is coupled, expressly or by necessary implication, with a request for interim relief, the court will need to take into account the factors relevant to both types of decision, and may need to take into account a third: that by securing interim relief and a stay, the applicant may be asking the court to use its powers to give him, for as long as he can secure it, a benefit that he may not obtain at the trial.

**[46]** The English Court in *R (on the application of AO & AM) v Secretary of State for the Home Department* [2017] UKUT 168 (IAC) referred to *AB (Sudan)* and stated as follows:

(a) every claimant is entitled to expect expeditious judicial adjudication. The strength of this expectation will be calibrated according to the individual litigation equation;

(b) the judicially imposed delay flowing from a stay order requires good reason;

(c) judicial choreography whereby one case is frozen awaiting the outcome of another is justified for example where the assessment is that the latter will have a critical impact upon the former; and

(d) great caution is to be exercised where a stay application is founded on the contention that the outcome of another case will significantly influence the outcome of the instant case.

**[47]** The case of *AB (Sudan)* and *R (on the application of AO & AM)* was cited with approval recently by the Federal Court in *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2019] 4 MLJ 421.

**[48]** The position in Australia is that generally jurisdiction of the courts to stay civil or criminal proceedings pending appeal is an exercise of the inherent jurisdiction of the courts (see: *Jennings Construction Ltd v Burgundy Royale Investments Pty Ltd* (1986) 161 CLR 681 at p 684; *Fuller & Cummings v Director of Public Prosecutions (Cth)* (1994) 68 ALJR 611). Being an extraordinary jurisdiction, exceptional circumstances must be shown before its exercise is warranted. Keeping matters in status quo until the litigation is finally resolved is not the purpose for which the inherent jurisdiction is invoked. Something quite exceptional must be shown before that jurisdiction is exercised (*Edelsten v Ward (No 2)* (1988) 63 ALJR 346) (see: *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2019] 4 MLJ 421).

**[49]** We are not able to find any reported case which has decided an application to stay a suit pending the outcome of the review application file in the Federal Court. We are of the view that the court may only stay a proceeding pending the outcome of a review application in the Federal Court pursuant to the courts inherent power under O 92 r 4 of the RC, so as to prevent injustice and abuse of court process (see: *AmBank (M) Bhd v Metal Reclamation (Industries) Sdn Bhd & Ors* [2016] 10 CLJ 205). Order 92 r 4 of the ROC provides as follows:

> *For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.* (Emphasis added.)

**[50]** In light of O 92 r 4 of the ROC and the authorities cited in paras 46 and 48 above, we regard the jurisdiction involved by the High Court as exceptional,

that is to say, it is a jurisdiction which should not be exercised unless it appears that the order appeal from it will affect an injustice and the injustice can be avoided by the intervention of the court.

**[51]** We are of the view that the review application in the Federal Court, would have an implication upon the outcome of the present case. However, it must be emphasised that it is undesirable at this stage to canvass the argument of whether the review application will succeed.

**[52]** As correctly pointed out by learned counsel for the defendants, the granting of leave by the High Court does not amount to a finding of committal. It is merely an ex parte vetting process to consider there was a prima facie case of contempt. In the case of *Foo Khoon Long v Foo Khoon Wong* [2009] 9 MLJ 441 it was stated that:

> [21] Be that as it may, it is also important to state the fact this court had granted leave to the said applicant to commence this committal proceeding against the respondents pursuant to an ex parte application (encl 22) did not necessarily mean that this court was satisfied that the charge has been proved beyond reasonable doubt. At the time when the court had granted leave on 11.6.2007, it is pertinent to observe that there was only a prima facie case of contempt, which based on an ex parte application. In other words, it is merely a vetting process on an ex parte basis to consider if there was a prima facie of contempt and the court did not go into the merits (see *Wee Choo Keong v MBI Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217).

**[53]** It is undeniable that if the respondents were ultimately to succeed on the review application, the severity of prejudice that could be suffered by the defendants is apparent if the stay of committal proceeding is not allowed as the committal proceeding is a proceeding that is penal in nature. The issue on the balance of justice is therefore in favour of the defendants.

**[54]** We were, therefore, not persuaded that there has been an error to warrant an appellate intervention in the exercise of discretion by the learned JC in the grant of stay of the committal proceeding.

CONCLUSION

**[55]** For the reasons stated above, we dismissed the appeal by the defendants with no order as to costs.

*Appeal dismissed.*

Reported by Nabilah Syahida Abdullah Salleh